

**Overnite Transportation Company and Local 705,
International Brotherhood of Teamsters, AFL–
CIO.¹ Case 13–CA–28668**

January 31, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

Exceptions filed to the judge's decision in this case² present the question, *inter alia*, of whether the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the Union as the collective-bargaining representative of the local drivers employed at the Respondent's newly opened Palatine terminal.

The Board has considered the exceptions in light of the record and briefs and has decided to affirm the judge's rulings, findings,³ and conclusions only to the extent consistent with this Decision and Order.⁴

The judge, applying an accretion analysis, found that the Respondent did not violate the Act by refusing to recognize the Union as the collective-bargaining representative of the local drivers employed at the Respondent's newly opened Palatine terminal because a majority of the unit employees at Palatine did not transfer from the Respondent's existing Bedford Park terminal.⁵ The judge further found that it was not clear whether the Union had made a request for recognition

with respect to the unit employees at Palatine. For the following reasons, we reverse the judge and find that the Respondent violated the Act as alleged.

We find initially that this case does not involve an accretion issue. Nor is the case precisely controlled by the precedent, cited by the General Counsel, concerning relocations of existing operations.⁶ Rather, we find that the Palatine terminal constitutes an extension of, or a spinoff from, the Respondent's truck terminal at Bedford Park. A similar issue involving a spinoff operation was before the Board in *Coca-Cola Bottling Co. of Buffalo*, 299 NLRB 989 (1990), *enfd.* 936 F.2d 122 (2d Cir. 1991). In that case, the union represented the respondent's employees at the Tonawanda warehouse. The respondent refused to, *inter alia*, recognize the union as the bargaining representative with respect to the unit employees at the new Orchard Park facility. The Board in *Coca-Cola* cited *Rice Food Markets*, 255 NLRB 884 (1981), for the proposition that accretion principles are not applicable where a "new" facility is in fact not wholly new either in function, staffing, or location.⁷ In this regard, the Board cited the following distinction drawn by the judge in *Rice Food* between an accretion and an employer's continuing obligation to recognize and bargain with a union on behalf of a group of employees spun off from an existing unit:

In practical effect, there is a heavy burden on a party seeking to prove "accretion" to show that the group sought to be added to an existing unit is an "accretion" within the meaning of the Board's longstanding use of that term. When, as here, an employer attempts to justify *removing* a particular group or groups from the coverage of a collective-bargaining agreement or relationship, it has the burden of showing that the group is sufficiently *dissimilar* from the remainder of the unit so as to warrant that removal. 299 NLRB 989 (*emphasis in original*) (citing 255 NLRB at 887).

On the facts before it, the Board in *Coca-Cola* first found that the respondent's Orchard Park warehouse was an extension of, or a spinoff from, the respondent's principal warehousing operation located some 20 miles away at Tonawanda. In so finding, the Board relied on the fact that the Orchard Park warehouse was designed to facilitate the distribution of the respondent's product to about 30 percent of its existing customer accounts, previously handled at Tonawanda, in the southern portion of its franchise territory. When the Orchard Park facility opened, three of its four employ-

¹ The name of the Charging Party has been changed to reflect the new official name of the International Union.

² On June 12, 1991, Administrative Law Judge Russell M. King, Jr. issued the attached decision. The General Counsel and the Charging Party each filed exceptions and supporting briefs, and the Respondent filed cross-exceptions and a supporting brief. The General Counsel also filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

³ In adopting the judge's finding that the Respondent violated Sec. 8(a)(5) and (1) of the Act by refusing to bargain with the Union about the effects on unit employees of opening the Palatine terminal, we note that a union must receive sufficient notice of a change to trigger its obligation to request bargaining. See *Fountain Valley Regional Hospital*, 297 NLRB 549 (1990). Here, as found by the judge, the Respondent failed to give the union advance notice of the planned opening of the Palatine facility.

⁴ The judge included a broad cease-and-desist provision in his recommended Order. In so doing, the judge relied on *Overnite Transportation Co.*, 296 NLRB 669 (1989), *enfd.* 938 F.2d 815 (7th Cir. 1991), which involved unfair labor practices committed by the Respondent in 1982. We find, however, that these instances of misconduct are too remote in time from the conduct found to be unlawful in the instant proceeding to support a broad order under the standard set forth in *Hickmott Foods*, 242 NLRB 1357 (1979). See, e.g., *Operating Engineers Local 12 (Hensel Phelps)*, 284 NLRB 246 fn. 2 (1987). We shall therefore substitute a narrow cease-and-desist provision.

⁵ The Union was the certified collective-bargaining representative of the local drivers employed by the Respondent at its Bedford Park terminal.

⁶ See, e.g., *Central Soya Co.*, 281 NLRB 1308 (1986).

⁷ In *Rice Food*, above, the Board found that the transfer by the employer of its liquor sales departments from its food stores to adjacent liquor stores constituted a spinoff from the food store operation.

ees were from Tonawanda.⁸ The Board further found that overall managerial control over the operations of the Orchard Park facility and its employees' work were made by officials at Tonawanda, and that the vehicles and other equipment used at Orchard Park was serviced at Tonawanda.

Having found that the Orchard Park facility was a spinoff operation, the Board in *Coca-Cola* next found that under *Rice Food*, above, the respondent had not demonstrated that the employee group at Orchard Park was sufficiently dissimilar from the remainder of the bargaining unit at Tonawanda to justify removing them from the unit. Citing evidence of a strong community of interest between the two groups of employees, the Board concluded that the respondent violated Section 8(a)(5) and (1) of the Act by, inter alia, refusing to recognize and bargain with the union as the representative of the Orchard Park employees.⁹

Applying the principles of *Coca-Cola*, above, to the instant case, we find that the following facts, as found by the judge and established by the record testimony, demonstrate that despite being approximately 27 miles away, the Palatine terminal is merely an extension of the main terminal at Bedford Park in terms of function and staffing, and is therefore a spinoff operation. The Palatine terminal was opened in order to serve the northern one-third of the former Bedford Park territory and to handle about 3000 of the 9000 customers previously handled by Bedford Park.¹⁰ In this respect, the Palatine terminal is analogous in purpose and scale to the opening of the Orchard Park facility in *Coca-Cola*, above. The Respondent transferred 19 local drivers from Bedford Park to Palatine; however, 3 of the transferees became nonunit, over-the-road drivers on being transferred. When the Palatine terminal opened on April 3, 1989, it employed 16 transferred local drivers and 17 local drivers who had been newly hired. Thus, the number of transferees was significant.¹¹ In terms of managerial control, Gordon, who had been the assistant terminal manager at Bedford Park, became the terminal manager at Palatine. Gordon testified that the terminals have the same supervisory structure except that the Palatine terminal does not have a separate personnel manager or operations manager.¹² The Pala-

tine terminal opened with a designated number of tractors, trucks, and trailers, some of which had been transferred from Palatine. The parties stipulated that each terminal performs general routine maintenance of their respective vehicles, but that if a breakdown occurs, the vehicle is taken to the nearest terminal to be repaired.

These facts make clear that the Palatine terminal is not a new facility, but operates as an extension of the Bedford Park warehouse. We therefore find, in reliance on *Coca-Cola*, above, that accretion principles do not apply here. Rather, we find that the Respondent has not met its burden of demonstrating that the employee group at Palatine is sufficiently dissimilar from the remainder of the bargaining unit at Bedford Park to justify removing them from the unit. As in *Coca-Cola*, above, the evidence reveals a community of interest between the two groups of employees. All of the Respondent's local drivers are covered by the Respondent's corporate policies with respect to wages, benefits, and work rules. Additionally, the Palatine unit employees perform basically the same work with the same kind of equipment and under the same working conditions as do the unit employees at Bedford Park. The parties stipulated that approximately once a week a Bedford Park customer is serviced by drivers and equipment assigned to Palatine and once a week a Palatine customer is serviced by a Bedford Park driver and equipment. Finally, there is evidence of regular contact between the employees. Gordon testified that about twice a night four trailers "shuttle" freight between terminals.

Based on the above, we find that the Palatine employees were at all relevant times part of the bargaining unit recognized by the Respondent at Bedford Park. When Union Representative Tenuta was questioned at the hearing as to whether the Union made any attempt to have the Respondent recognize the Union as the representative of the Palatine employees, he responded, "Yes, our attorneys did." Tenuta further testified:

Our attorney, Mr. Charone, contacted me and says they are not going to acknowledge the move to Palatine, that we would have to take legal action.

We find, contrary to the judge, that Tenuta's un rebutted testimony, albeit hearsay, is sufficient to establish that the Union made a request for recognition.

⁸It appears, however, that only one employee transferred from a unit position at Tonawanda to a unit position at Orchard Park. See 299 NLRB at 990 fn. 4.

⁹See also *Illinois-American Water Co.*, 296 NLRB 715 (1989), enf'd, 933 F.2d 1368 (7th Cir. 1991).

¹⁰We note that although the Respondent added a small portion of new territory to the area serviced from the Palatine terminal, the parties stipulated that 95 to 99 percent of Palatine's customers had previously been serviced by Bedford Park.

¹¹The judge found that a number of management and clerical workers, mechanics, and dockmen also transferred to Palatine from Bedford Park.

¹²The evidence establishes that each of the terminals is governed by policies established at the Respondent's corporate office in Vir-

ginia. Decisions involving wages, hours of work, and safety are made at the corporate offices. The terminal managers report to the corporate director of staff operations, who is responsible "for the staffing of terminals for efficiency and service." An official at the corporate office also coordinates information about transfers among terminals, including publicizing notices of vacancies. We note in this regard that the judge found that the Respondent did not follow the usual notification procedures with respect to the opportunity for Bedford Park employees to transfer to Palatine.

Moreover, under the circumstances, including the Respondent's continuing obligation to recognize and bargain with the Union on behalf of the unit employees, we find that the refusal-to-bargain charge filed by the Union in the instant case was tantamount to a valid request for recognition. See *Sterling Processing Corp.*, 291 NLRB 208, 217 (1988).¹³ See also *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27, 53-54 (1987) (demand in successorship context).

Accordingly, we reverse the judge and find that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit employees at the Palatine terminal.¹⁴

AMENDED CONCLUSIONS OF LAW

Substitute the following for Conclusions of Law 4 and 5:

"4. By refusing to recognize and bargain with the Union as the collective-bargaining representative of the unit employees at the Palatine terminal, the Respondent violated Section 8(a)(5) and (1) of the Act.

"5. The unfair labor practices found affect commerce within the meaning of Section 2(6) and (7) of the Act."

ORDER

The National Labor Relations Board orders that the Respondent, Overnite Transportation Company, Bedford Park and Palatine, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Local 705, International Brotherhood of Teamsters, AFL-CIO concerning the effects on unit employees of the Respondent's opening of the Palatine terminal.

(b) Refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All local drivers employed at the Employer's terminals located at 6633 West 75th Street, Bedford Park, Illinois and 750 Hicks, Palatine, Illinois; but excluding all other employees, clericals, guards and supervisors as defined in the Act.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following action necessary to effectuate the policies of the Act.

¹³ Relying on Tenuta's testimony, Member Oviatt concludes that the Union made a request for recognition. Thus, he finds it unnecessary to reach the question whether the refusal to bargain charge was tantamount to a valid request for recognition.

¹⁴ We shall modify the Conclusions of Law, recommended Order, and notice to conform to the violations found.

(a) On request, bargain with the Union concerning the effects on unit employees of the Respondent's opening of the Palatine terminal.

(b) Recognize and on request bargain with the Union as the exclusive collective-bargaining representative of the employees in the unit described above.

(c) Post at its Bedford Park and Palatine, Illinois terminals copies of the attached notice marked "Appendix."¹⁵ Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt, and be maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

¹⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Local 705, International Brotherhood of Teamsters, AFL-CIO concerning the effects on unit employees of the Respondent's opening of the Palatine terminal.

WE WILL NOT refuse to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All local drivers employed at the Employer's terminals located at 6633 West 75th Street, Bedford Park, Illinois, and 750 Hicks, Palatine, Illinois; but excluding all other employees, clericals, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union about the effects on unit employees of our opening of the Palatine terminal.

WE WILL recognize and on request bargain with the Union as the exclusive collective-bargaining representative of the employees in the unit described above.

OVERNITE TRANSPORTATION COMPANY

Richard S. Andrews, Esq., for the General Counsel.
John O. Pollard, Esq. (Blakeney, Alexander & Machen), of Charlotte, North Carolina, for the Respondent.
Sheldon M. Charone, Esq. (Carmell, Charone, Widmer, Matthews & Moss), of Chicago, Illinois, for the Union.

DECISION

STATEMENT OF THE CASE

RUSSELL M. KING JR., Administrative Law Judge. This case was heard by me in Chicago, Illinois, on January 17 and 18, 1990, pursuant to a charge filed by Local 705, International Brotherhood of Teamsters, AFL-CIO (the Union) on May 30, 1989,¹ and a complaint issued on July 11 by the Regional Director for Region 13 of the National Labor Relations Board (the Board), on behalf of the Board's General Counsel.² The complaint alleges that Overnite Transportation Company (the Respondent) violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act) when it opened a new terminal facility some 27 miles from its Bedford Park, Illinois facility and failed to bargain with the Union over the effects of the opening, and further failed to recognize the Union at the new facility (Palatine, Illinois).³ The Respondent denies any obligation to so bargain with or recognize the Union, which represents the Respondent's Bedford Park local drivers.

¹ All dates are in 1989 unless otherwise indicated.

² The term "General Counsel," when used will normally refer to the attorney in the case acting on behalf of the General Counsel of the Board, through the Regional Director.

³ The pertinent parts of the Act (29 U.S.C. § 151.) provide as follows:

Sec. 8(a). It shall be an unfair labor practice for an employer—(1) to interfere with, restrain or coerce employees in the exercise of the rights guaranteed in Section 7 . . . (5) to refuse to bargain collectively with the representative of his employees

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. . . .

Sec. 8(d). For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if required by either party.

On the entire record,⁴ including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel, counsel for the Union, and counsel for the Respondent, I make the following

FINDINGS OF FACT⁵

I. JURISDICTION AND THE LABOR ORGANIZATION

The pleadings, admissions, and evidence in the case establish the following jurisdictional facts. The Respondent is, and has been at all times material, a Virginia corporation engaged in the interstate transportation of goods and commodities with offices and places of business in several States, including facilities now located in Bedford Park and Palatine, Illinois. During the calendar year ending December 31, 1988, Respondent, in the course and conduct of its business, derived gross revenues in excess of \$50,000 from the transportation of freight and commodities in interstate commerce. I find, as admitted, that the Respondent is now, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Further, and as admitted herein, I find that the Union has been at all times material a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Brief Summary of Evidence and Testimony

On June 25, 1982, the Union was certified by the Board as the exclusive bargaining representative of all local drivers of the Respondent at its Bedford Park, Illinois facility. Negotiations subsequent to the Union's certification failed to result in a collective-bargaining agreement and the Respondent engaged in conduct which resulted in the filing of charges with the Board in October 1982. After a hearing in 1983, a judge's decision in 1984, and the filing of exceptions, the Board issued its decision on September 21, 1989 (296 NLRB 669.) In that decision the Board found that the Respondent had violated Section 8(a)(1) and (5) of the Act by threats of discharge, terminal closure, and interrogation of employees about union activity. The Board also determined that the Respondent had failed to bargain in good faith in violation of Section 8(a)(1) and (5) of the Act, and entered an appropriate remedial order. Negotiations had resumed as of the time of the hearing in the instant case (January 1990), but no agreement had been reached.

In February 1989, the Respondent determined to open a new terminal facility in the area previously serviced exclusively by the Bedford Park terminal. This terminal was located at Palatine, some 27 miles from the older terminal.

⁴ Certain errors in the transcript are noted and corrected.

⁵ The facts found are based on the record as a whole and on my observation of the witnesses. The credibility resolutions have been derived from a review of the *entire* testimonial record and exhibits with due regard for the logic of probability, the demeanor of the witnesses, and the teaching of *NLRB v. Walton Mfg. Co.*, 369 U.S. 404, 408 (1962). As to those testifying in contradiction of the findings, their testimony has been discredited either as having been in conflict with the testimony of credible witnesses or because it was in and of itself incredible and unworthy of belief. *All* testimony and evidence, regardless of whether mentioned or alluded to has been reviewed and weighed in light of the *entire* record.

Both Bedford Park and Palatine are suburbs of Chicago. Former Bedford Park Assistant Terminal Manager William Gordon was designated terminal manager at the new facility. Palatine opened for business on April 3, and serviced the northern third of the area previously serviced by Bedford Park. Some 3000 customers previously served by Bedford Park received the same services from Palatine, which generated about a third of the revenue previously obtained solely through Bedford Park. The total area serviced by the two terminals ran about 120 miles in the north-south direction and about 60 miles in an east-west direction. The approximate north-south midpoint of the area was downtown Chicago.

The Respondent failed to give the Union or its Bedford Park local drivers any general and advance notice of the prospective opening of the Palatine facility, and only a week and a half before the opening it held meetings for the Bedford drivers. The normal practices of notifying drivers of an opportunity to transfer to a new facility through bulletin board notices or putting a notification in pay envelopes were not followed, but instead, a number of drivers were contacted on an individual basis to see if they wished to transfer to Palatine.

The Union only became aware of the Palatine situation through rumors communicated to it by Respondent's drivers. On the basis of these rumors, Union Business Agent Sam Tenuta went to the Bedford Park terminal in late March to talk about the situation with Respondent's terminal manager, Clements.⁶ He was informed that Clements was not available and asked to leave, and in fact, there was a threat to call the police if Tenuta did not leave. Tenuta left the premises without further incident. Several days after his abortive visit Tenuta managed to reach Clements by phone and asked him about Palatine and how Respondent intended staffing it. He also inquired if the Bedford drivers would have an opportunity to transfer to Palatine and have transfer-back privileges. However, Tenuta's inquiries were cut off by Clements stating "I have nothing to say." Tenuta thereafter told the Union's attorney, Charone to open negotiations about Palatine. Charone apparently was unsuccessful in getting Respondent to negotiate concerning the effect on the bargaining unit of opening the Palatine facility, although the record does not reflect what Charone did in this connection, or who, if anyone, he talked with.

Respondent opened the Palatine terminal on April 3. A number of management and clerical workers, mechanics, dockmen, and drivers were transferred to Palatine from Bedford Park, including 19 of the union-represented Bedford Park drivers to Palatine. Three of these drivers were converted to and transferred as over-the-road drivers. Respondent hired 17 new drivers for a total of 33 local drivers at the Palatine facility. Out of the combined total of 154 local drivers at the two facilities as of April 3, 137 had been in the original Bedford Park unit represented by the Union. A stipulation between the parties also reflects that the Bedford Park facility transferred eight tractors, two straight trucks, and six trailers to Palatine. About once a week, a Bedford Park cus-

tommer is serviced out of the Palatine terminal and a Palatine customer is serviced by Bedford Park. On occasion, if a truck breakdown occurs near either facility, it will be serviced at the closer terminal, even though it is based at the other terminal. The evidence reflects that some Bedford Park drivers lost worktime following the opening of the Palatine terminal. Operations at the two terminals were basically the same. The same equipment is used by similarly skilled employees working under similar administrative controls to accomplish the same ends. The two terminals, as of the time of the hearing, differed only in the scale of their operations, Bedford Park handling about twice the amount of delivery work as Palatine. In sum, the Bedford Park terminal fissioned and its resulting smaller part became the Palatine terminal (called a "satellite" by the General Counsel), servicing about one-third the area previously handled by Bedford Park alone with a number of drivers, other employees, management and equipment transferred from Bedford Park.

B. Analysis

1. The duty to bargain over the effects of the Palatine opening

Paragraphs VII and IX of the complaint allege that the Respondent, since the beginning of May 1989, failed to bargain with the Union over the effects of opening the Palatine terminal on the unit of local drivers at the Bedford Park terminal, in violation of Section 8(a)(1) and (5) of the Act. I find that the Palatine opening did affect the local drivers at Bedford Park in a number of ways, including the size of the unit, where they would work, route changes, transfers and transfer rights, and driving hours (affecting wages). It is well settled that Respondent was under a duty to bargain with the Union about the results or effects of its decision to open the Palatine terminal and transfer a number of unit (local) drivers to Palatine from Bedford Park. *First National Maintenance Corp. v. NLRB*, 452 U.S. 666 fn. 15 at 677-678, 681-682 (1981). The record reflects, and I so find, an absolute refusal to bargain about any aspect of the Palatine opening. Accordingly, I find that Respondent's refusal violated Section 8(a)(1) and (5) of the Act as alleged in the complaint.

2. Failure to recognize the Union at Palatine

Paragraphs VIII and IX of the complaint allege that "on or about the beginning of May, 1989," the Union requested the Respondent to recognize it as the exclusive bargaining representative of the "employees in the Unit employed at its operations transferred to the newly opened Palatine facility," and that the Respondent refused, in violation of Section 8(a)(1) and (5) of the Act. The wording of the allegation, "employees in the Unit employed at its operations transferred," initially appears somewhat curious, but understandable in light of the General Counsel's legal theory set forth in his brief. The General Counsel argues that Palatine was a "partial transfer, relocation, or expansion of unit work," and does not argue or claim an "accretion" (when new employees are added to an existing bargaining unit), fearing, in my opinion, that since a majority of the local drivers at Pala-

⁶The complaint spells the Bedford Park terminal manager's name Jerald "Clements." The official transcript spelling is "Clemmens." The briefs of the General Counsel and the Union use the spelling "Clemments." The Respondent's brief refers only to the "terminal manager," and not by name. The terminal manager did not appear as a witness, and no exhibit bears his name.

tine were not from the Bedford Park unit,⁷ an “accretion” theory would not wash here.⁸ In *Renaissance Center Partnership*, 239 NLRB 1247 (1979), the Board noted it was “cautious” in finding an accretion, particularly when the accreted group “numerically overshadows” the existing certified unit, because it would deprive the “larger” group of employees their statutory right to select their own bargaining representative. In fact, no case has been cited, or can be found in which the Board concluded an accretion where the accreted group outnumbered (even by one) the existing unit group. In *Central Soya Co.*, 281 NLRB 1308 (1986), involving a “consolidation” and “relocation” situation, the Board indicated that an accretion may be found when the two groups of employees are of “approximately equal size [and] even when the represented employees *barely constituted a majority* of the combined work force” (emphasis added). Whether Palatine is labeled a consolidation, a relocation, a partial relocation, or an extension of the Bedford Park unit, in my opinion for the Union to represent the local drivers at Palatine without separate representation proceedings, the unit at Bedford Park must be extended to Palatine through an accretion, and the 17 newly hired local drivers cannot be accreted because they constitute a majority of the local drivers at Palatine.⁹ Although I am convinced that the Respondent’s intent and motive was exactly this outcome, given its history of antiunion animus,¹⁰ the statutory rights of the new drivers must be controlling here.

In this case, the General Counsel faces yet another problem. Although the record is clear that the Union requested (and was refused) “effects” bargaining, the record is ambiguous at best not only as to when a request for recognition at Palatine was made, but as to whether such a request was actually made. The General Counsel concludes that such a request was made from the testimony of Union Representative Tenuta, when he was asked if the Union had made any attempt to have the Respondent recognize the Union at Palatine. Tenuta answered as follows: “Yes. Our Attorney, Mr. Charone, contacted me and says they are not going to ac-

⁷The General Counsel recites in his brief that on April 3, Respondent transferred 19 drivers to Palatine, 3 of which “became” over-the-road drivers. In my opinion, the evidence reflects that the three drivers were transferred directly to over-the-road driver positions, and did not later “become” such. Thus, there remained 16 transferred local drivers and 17 new local drivers were newly hired by the Respondent.

⁸In support of his theory, the General Counsel cites *Central Soya Co.*, 281 NLRB 1308 (1986); *Harte & Co.*, 278 NLRB 947 (1986); *Molded Accoustical Products*, 280 NLRB 1394 (1986); and *Westwood Import Co.*, 251 NLRB 1213 (1980), all of which are exclusively entire relocation cases. In the instant case, a new but smaller terminal was opened, and at best there was only a partial relocation or voluntary transfer of a small number of unit members.

⁹In all other respects, I find the record would support an accretion. Working conditions were the same, management (together with most other classifications of employees) came from Bedford Park, and the Respondent was part of a nationwide company with central rules and procedures for operating and conducting business. See *Universal Security Instruments*, 250 NLRB 661 (1980), enf’d. 649 F.2d 247 (4th Cir. 1981), cert. denied 454 U.S. 965 (1981).

¹⁰See *Overnite Transportation Co.*

knowledge the move to Palatine, that we would have to take legal action.” Tenuta had previously attempted to talk to Bedford Park Terminal Manager Jerald Clements about Palatine, but Clements refused, referring him to Respondent’s attorney, and stating “Let our attorneys talk to each other.” Tenuta himself never requested recognition at Palatine and Attorney Charone did not testify in the case. There is no evidence of any letter requesting recognition, or any interchange between Charone and the Respondent’s attorney. The Union’s chief concern at the time appeared to have been how the Bedford Park unit would be affected and the transfer rights of the unit’s local drivers. No matter how hard I squeeze the record in this case, I cannot find that the General Counsel has met his burden of proving, by a preponderance of the evidence, that the Union requested recognition at the Palatine terminal. To infer a request from Tenuta’s conversation with Clements (in which Tenuta admittedly did most or all of the talking) would be an improper inference in my opinion, and the record is moot as to what, if any, steps or actions attorney Charone took in an attempt to secure recognition. Further, to dispense with the necessity of a request in this case because of alleged futility would also be improper. Although Clements did refuse to talk to Tenuta about Palatine, he referred Tenuta to the Respondent’s attorney and suggested that both attorneys confer about the matter.

For the foregoing reasons, I shall recommend that the allegation contained in paragraph VIII of the complaint be dismissed.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By failing and refusing to bargain or negotiate with the Union regarding the effects of opening the Palatine terminal on members, or former and transferred members, of the unit of local drivers at its Bedford Park terminal, the Respondent violated Section 8(a)(1) and (5) of the Act.
4. That the Respondent has not otherwise violated the Act.
5. That the unfair labor practice found in paragraph 3, above, affects commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in an unfair labor practice, I shall recommend that it be ordered to cease and desist therefrom and take affirmative action designed to effectuate the policies of the Act, including the posting of an appropriate “Notice to Employees,” to be posted at both the Bedford Park and Palatine terminals. I find that the unfair labor practice committed by the Respondent, when considered in the light of its previous violations at the Bedford Park location, requires a broad “cease and desist” order, and I shall so recommend. *Hickmott Foods*, 242 NLRB 1357 (1979).

[Recommended Order omitted from publication.]